

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE:

Application of CATERPILLAR
CRÉDITO, SOCIEDAD
ANÓNIMA DE CAPITAL
VARIABLE, SOCIEDAD
FINANCIERA DE OBJETO
MÚLTIPLE, ENTIDAD REGULADA
for an Order Pursuant to 28 U.S.C.
§ 1782 Granting Leave to Obtain
Discovery for Use in a Foreign
Proceeding,

Applicant.

CAROLINA ELIZABETH VÁRADY
DE BELLOSTA, et al.,

Intervenors,

CASE NO. 2:22-cv-01549-JLR

**PROTECTIVE ORDER
GOVERNING THE
PRODUCTION OF
DOCUMENTS BY T-
MOBILE US, INC.**

1. PURPOSES AND LIMITATIONS

On September 27, 2022, Caterpillar Crédito Sociedad Anónima de Capital Variable, Sociedad Financiera de Objeto Múltiple, Entidad Regulada (“Caterpillar Crédito”) submitted an *ex parte* application pursuant to 28 U.S.C. § 1782 for leave to obtain discovery for use in the lawsuit that Carolina Elizabeth Várady de Bellosta (“Mrs. Bellosta”) filed against Caterpillar Crédito and Carlos Marcelina Jose Bellosta Pallares (“Mr. Bellosta,” and collectively, “the Bellostas”) in Curaçao in April 2022 through which Mrs. Bellosta seeks to annul two personal guarantees her husband gave to Caterpillar Crédito in October 2015 and October 2016 (“Curaçao Proceeding”). Caterpillar Crédito’s 1782 application sought a subpoena for the phone records of Mrs. Bellosta and Mr. Bellosta from T-Mobile US, Inc. (“T-Mobile”). On October 3, 2022, the Court granted Caterpillar Crédito’s application. On or about October 27, 2022, T-Mobile produced documents in response to Caterpillar Crédito’s subpoena, and T-Mobile is expected to produce additional documents (collectively, the “Production”). On November 6, 2022, the Court ordered Caterpillar Crédito and the Bellostas (collectively, the “Parties”) to enter into a stipulated protective order governing the production, use, and dissemination of confidential material. The Parties could not come to an agreement on a stipulated protective order. Thus, in accordance with the Court’s November 6, 2022 Order, the Court hereby enters the following protective order.

The Parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle Parties to file confidential information under seal.

2. USE OF THE T-MOBILE PRODUCTION

The Production only shall be used for prosecuting, defending, or attempting to settle the Curaçao Proceeding, and shall not in any manner be used for any other purpose, including to prosecute, defend, or attempt to settle any other proceeding, lawsuit, litigation, or arbitration (including without limitation the ICC arbitration Caterpillar Crédito has brought against Mr. Bellosta).

3. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged: personal identifying information.

4. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by Parties or their counsel that might reveal confidential material.

However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

5. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

5.1 Basic Principles. Confidential material may be disclosed only to the categories of persons and under the conditions described in this agreement. Confidential material must be stored and maintained by Caterpillar Crédito at a location and in a secure manner that ensures that access is limited to the persons authorized under this agreement.

5.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Bellostas, Caterpillar Crédito may disclose any confidential material only to:

(a) Caterpillar Crédito’s counsel of record in this proceeding and in the Curaçao Proceeding, as well as employees of counsel to whom it is reasonably necessary to disclose the

1 information for the Curaçao Proceeding, and, as to counsel in the Curaçao Proceeding, who have
2 either (i) signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); or (ii) signed a
3 binding confidentiality agreement, enforceable in the courts of Curaçao, committing to keep the
4 information confidential on substantially the same terms as apply under this Order;

5 (b) the officers, directors, and employees (including in house counsel) of
6 Caterpillar Crédito or its affiliates to whom disclosure is reasonably necessary for the Curaçao
7 Proceeding, unless the Parties agree that a particular document or material produced is for
8 Attorney’s Eyes Only and is so designated;

9 (c) experts and consultants to whom disclosure is reasonably necessary for the
10 Curaçao Proceeding and who have either (i) signed the “Acknowledgment and Agreement to Be
11 Bound” (Exhibit A); or (ii) signed a binding confidentiality agreement, enforceable in the courts
12 of Curaçao, committing to keep the information confidential on substantially the same terms as
13 apply, under this Order;

14 (d) this court, the courts presiding over the Curaçao Proceeding, their
15 personnel, and any court reporters and their staff;

16 (e) copy or imaging services retained by counsel to assist in the duplication of
17 confidential material;

18 (f) during their depositions, witnesses to whom disclosure is reasonably
19 necessary and who have either (i) signed the “Acknowledgment and Agreement to Be Bound”
20 (Exhibit A); or (ii) signed a binding confidentiality agreement, enforceable in the courts of
21 Curaçao, committing to keep the information confidential on substantially the same terms as apply,
22 under this Order, unless otherwise agreed the Bellostas or ordered by the court. Pages of
23 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
24 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
25 under this agreement; and
26

1 (g) the author or recipient of a document containing the information or a
2 custodian or other person who otherwise possessed or knew the information.

3 5.3 Filing Confidential Material in this Court. Before filing confidential material or
4 discussing or referencing such material in court filings, Caterpillar Crédito shall confer with the
5 Bellostas, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the Bellostas will
6 remove the confidential designation, whether the document can be redacted, or whether a motion
7 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
8 Bellostas must identify the basis for sealing the specific confidential information at issue, and
9 Caterpillar Crédito shall include this basis in its motion to seal, along with any objection to sealing
10 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and
11 the standards that will be applied when a Party seeks permission from the court to file material
12 under seal. A Party who seeks to maintain the confidentiality of its information must satisfy the
13 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the Party filing the motion to seal.
14 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with
15 the strong presumption of public access to the Court's files.

16 5.4 Filing Confidential Material in a Foreign Proceeding. Notwithstanding anything
17 else in this Section 5, to the extent Caterpillar Crédito seeks to file confidential materials in a
18 foreign proceeding, Caterpillar Crédito will use its reasonable best efforts to keep such material
19 confidential. For the avoidance of doubt, a Party filing confidential materials in a foreign
20 proceeding will not be in breach of this order based on the act of filing the confidential materials
21 if the foreign court does not permit filing under seal or otherwise determines that the materials
22 should be made public.

23 6. DESIGNATING PROTECTED MATERIAL

24 6.1 Exercise of Restraint and Care in Designating Material for Protection. The
25 Bellostas must take care to limit any such designation to specific material that qualifies under the
26 appropriate standards. The Bellostas must designate for protection only those parts of material,

1 documents, items, or oral or written communications that qualify, so that other portions of the
2 material, documents, items, or communications for which protection is not warranted are not swept
3 unjustifiably within the ambit of this agreement.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
5 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
6 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
7 and burdens on other Parties) expose the Bellostas to sanctions.

8 If it comes to the Bellostas' attention that information or items that it designated for
9 protection do not qualify for protection, the Bellostas must promptly notify Caterpillar Crédito that
10 they are withdrawing the mistaken designation.

11 6.2 Manner and Timing of Designations. Except as otherwise provided in this
12 agreement, or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for
13 protection under this agreement must be clearly so designated by the Bellostas within five days
14 after the material is disclosed or produced. To facilitate this process, Caterpillar Crédito shall
15 provide those productions to the Bellostas within two business days of receipt.

16 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
17 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
18 the Bellostas must affix the word "CONFIDENTIAL" to each page that contains confidential
19 material. If only a portion or portions of the material on a page qualifies for protection, the
20 Bellostas also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings
21 in the margins).

22 (b) Testimony given in deposition or in other pretrial proceedings: the Parties
23 must identify on the record, during the deposition or other pretrial proceeding, all protected
24 testimony, without prejudice to their right to so designate other testimony after reviewing the
25 transcript. Any Party may, within fifteen days after receiving the transcript of the deposition or
26 other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as confidential.

1 If a Party desires to protect confidential information at trial, the issue should be addressed during
2 the pre-trial conference.

3 (c) Other tangible items: the Bellostas must affix in a prominent place on the
4 exterior of the container or containers in which the information or item is stored the word
5 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
6 the Bellostas, to the extent practicable, shall identify the protected portion(s).

7 6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
8 designate qualified information or items does not, standing alone, waive the Bellostas’ right to
9 secure protection under this agreement for such material. Upon timely correction of a designation,
10 Caterpillar Crédito must make reasonable efforts to ensure that the material is treated in accordance
11 with the provisions of this agreement.

12 7. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 7.1 Timing of Challenges. Caterpillar Crédito may challenge a designation of
14 confidentiality at any time. Unless a prompt challenge to the Bellostas’ confidentiality designation
15 is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a
16 significant disruption or delay of the litigation, Caterpillar Crédito does not waive its right to
17 challenge a confidentiality designation by electing not to mount a challenge promptly after the
18 original designation is disclosed.

19 7.2 Meet and Confer. The Parties must make every attempt to resolve any dispute
20 regarding confidential designations without court involvement. Any motion regarding confidential
21 designations or for a protective order must include a certification, in the motion or in a declaration
22 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
23 affected Parties in an effort to resolve the dispute without court action. The certification must list
24 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
25 to-face meeting or a telephone conference.

7.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention, the designating Party may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the Bellostas. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other Parties) may expose the challenging Party to sanctions. All Parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If Caterpillar Crédito is served with a subpoena or a court order issued in other litigation that compels disclosure of the confidential material or any portion thereof, Caterpillar Crédito must:

(a) promptly notify the Bellostas in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Bellostas whose confidential material may be affected.

9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If Caterpillar Crédito learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, Caterpillar Crédito must immediately (a) notify in writing the Bellostas of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement,

1 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be
2 Bound” that is attached hereto as Exhibit A.

3 10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
4 MATERIAL

5 When the Bellostas give notice to Caterpillar Crédito that certain inadvertently produced
6 material is subject to a claim of privilege or other protection, the obligations of Caterpillar Crédito
7 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended
8 to modify whatever procedure may be established in an e-discovery order or agreement that
9 provides for production without prior privilege review. The Parties agree to the entry of a non-
10 waiver order under Fed. R. Evid. 502(d) as set forth herein.

11 11. NON TERMINATION AND RETURN OF DOCUMENTS

12 Within 60 days after the termination of the Curaçao Proceeding, including all appeals,
13 Caterpillar Crédito must return all confidential material to the Bellostas, including all copies,
14 extracts and summaries thereof. Alternatively, the Parties may agree upon appropriate methods of
15 destruction.

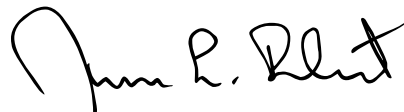
16 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
17 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
18 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
19 product, even if such materials contain confidential material.

20 The obligations imposed by this agreement shall remain in effect until the Bellostas agree
21 otherwise in writing or a court orders otherwise.

1 IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
3 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
4 state proceeding, constitute a waiver by the Bellostas of any privilege applicable to those
5 documents, including the attorney-client privilege, attorney work-product protection, or any other
6 privilege or protection recognized by law.

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8 DATED: November 16, 2022

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11 James L. Robart
12 United States District Court Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Protective Order that was issued by the
United States District Court for the Western District of Washington on [date] in the case of *In re:*
Application of Caterpillar Crédito (Case No. 2:22-cv-01549-JLR). I agree to comply with and to
be bound by all the terms of this Protective Order and I understand and acknowledge that failure
to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
promise that I will not disclose in any manner any information or item that is subject to this
Protective Order to any person or entity except in strict compliance with the provisions of this
Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Protective Order,
even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____